IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MRS. JUSTICE K.HEMA

THURSDAY, THE 25TH AUGUST 2005 / 3RD BHADRA 1927

Crl.MC.No. 9953 of 2002()

PETITIONER:

HABEEBU RAHMAN K.V.,
S/O. ABDULLAKUTTY, KOLATHIKKAL VETTUPARA,
CHEEKKODE P.O., CHERUVAYUR VIA.

BY ADV. SRI.T.G.RAJENDRAN

RESPONDENTS:

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1. ANIMAL WELFARE OFFICER,
ANIMAL WELFARE BOARD OF INDIA, 34/632,
CIVIL STATION, H.P.O., KOZHIKODE.

2. THE DISTRICT MAGISTRATE &
DISTRICT COLLECTOR, KOZHIKODE.

3. STATE OF KERALA,
REP. BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY ADV. SRI.V.G.ARUN
PUBLIC PROSECUTOR SMT.TRESA RANI GEORGE

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 25/08/2005, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.HEMA, J.

CRL.M.C.NO. 9953 OF 2002

Dated this the 25th day of August, 2005

O R D E R

Cattle races and other similar activities in Kozhikode District which resulted in cruelty to animals are banned as per Annexure-I order passed by the District Magistrate and District Collector, Kozhikode under Section 133 Cr.P.C. The Commissioner of Police, Calicut City, Superintendent of Police, Kozhikode (Rural), Vatakara are also directed to take appropriate action to ensure that no such activities are to be conducted in their jurisdiction. The petitioner is aggrieved by this. Hence this revision.

2. According to the petitioner, as part of the harvest festival, cattle races are to be conducted in Kozhikode and Malappuram Districts organised either by the panchayat or other organisations. In these festivals, a pair of cattle is given a chance to participate in the race, the venue of which would be usually paddy fields. The petitioner had occasion to participate in such races, but the second respondent District Magistrate/District Collector issued an order Annexure-I banning cattle races in Kozhikode district with immediate effect.

3. The said order is passed on the basis of a complaint lodged by the first respondent who is the Animal Welfare Officer. As per the report of the Animal Welfare Officer, the cattle race involved animal cruelty. According to the report, animals were forced to run at the highest speed possible. It is also stated in the report that the officer had even seen cattle which are taking part in the cattle-race being fed with alcohol prior to the race, the cattle being whipped and the whipping end of cord being pierced with iron nails. Even the plough is fixed up with concealed electric wires and batteries to administer shock to the cattle while the race is in progress which is intended to increase its speed. The report would reveal that these practices were seen by the officer personally at places like Palakkad and its border Districts of Pollachi and Coimbatore in Tamil Nadu. Hence to prevent such torture and cruelty inflicted on the dumb creatures in the name of cattle-races, the Anila Welfare Officer/first respondent requested the District Collector to impose a blanket ban on conducting cattle races.

4. The District Magistrate acted on the basis of the information given by the first respondent that illegal cattle races are being conducted in violation of section 11(1)(a) of the Prevention of Cruelty to Animals Act, 1960 (hereinafter referred to as 'the Act') and it was found that there were sufficient grounds to prevent such

torture and cruelty being inflicted on the dumb creatures in the name of cattle races. The second respondent therefore in exercise of the powers under Section 133 Cr.P.C and Section 11 of the Act, banned cattle races and other similar activities which will result in cruelty to animals.

5. The order of the District Magistrate is attacked mainly on the ground that Section 133 Cr.P.C can be invoked only for abatement of public nuisance but there is no such public nuisance involved in this case to exercise jurisdiction under Section 133 of the Code. It was strongly contended that the District Collector had no jurisdiction to pass an order under Section 133 Cr.P.C banning cattle races and that cattle race is not a public nuisance and it does not involve an act of cruelty as mentioned in Section 11(a) of the Act. It is argued that at any rate, a general order cannot be passed under Section 133 Cr.P.C., since the said provision contemplates subjective satisfaction that there is a public nuisance. That apart, the information given by the first respondent cannot be treated as a complaint for invoking Section 133 Cr.P.C., since it does not contain any allegation of public nuisance, is the argument.

6. On going through the order impugned in this proceedings, it is clear that the District Magistrate has not entered any finding whether any public nuisance is involved or not. The District

Magistrate appears to be moved and pricked by the allegations of animal-cruelty which are disclosed by the report of the first respondent and triggered by such moral dynamism, an order under Section 133 Cr.P.C is seen issued. While respecting the right frame of mind which propelled the District Magistrate to pass an order banning cattle races, this Court is unable to uphold the illegality committed by the order for the following reasons.

7. A reading of Section 133 Cr.P.C will go to show that if the District Magistrate or a Sub Divisional Magistrate or any other Executive Magistrate on receiving an information or report and on taking such evidence, if any, considers that any "nuisance" should be removed from any public place etc., which will be lawfully used by the public or any unlawful obstruction is caused, such Magistrate may make a conditional order requiring the person causing such obstruction or nuisance or carrying on such trade or occupation is injurious to the health or physical comfort of the community and that consequence of such trade or occupation should be prohibited or regulated, such Magistrate may make a conditional order under Section 133 Cr.P.C requiring the person causing such obstruction or nuisance or carrying on such trade or occupation, within a time to be fixed in the order to remove such obstruction or nuisance or to desist from carrying on or to remove or regulate in such manner as

may be directed, such trade or occupation.

8. In this case, the impugned order will not show whether any of the requirements under Section 133 Cr.P.C are made out to issue an order under Section 133 Cr.P.C. In fact, the order passed in this case under Section 133 Cr.P.C is not a conditional order, as envisaged under Section 133 Cr.P.C. The District Magistrate, on receiving the information given by the first respondent/Animal Welfare Officer has not considered the question whether there is any unlawful obstruction or nuisance to be removed from any public place or from any place which is or may be lawfully used by the public. He has not considered the question whether the conduct of the cattle-races amounts to any trade or occupation which is injurious to the health or physical comfort of the community. While passing order under Section 133 Cr.P.C., the District Magistrate also was not satisfied or required any particular person to remove the obstruction or nuisance or to desist from carrying on cattle races.

9. Section 133 Cr.P.C provides that the District Magistrate is empowered to make a conditional order requiring a particular person causing such obstruction or nuisance to remove such obstruction or nuisance. But no particular person is called upon to remove the obstruction or nuisance. The order under Section 133 Cr.P.C can be issued only to a person who is guilty of causing obstruction or

nuisance or the violation stated in Section 133. But in this case no particular person is required to do the acts stated in Section 133. That apart Section 133 provides that the persons called upon to remove the obstruction or nuisance has to be directed to remove such obstruction or nuisance within a time to be fixed in the order. But, no time is fixed in the order as required under Section 133 Cr.P.C.

10. For all the above reasons, the order passed by the District Magistrate is not sustainable. A reading of Section 133 Cr.P.C will go to show that the order can be passed only against a particular person or persons but a general order banning a particular act cannot be made. Such a general prohibitory order is not covered by Section 133 Cr.P.C and hence the impugned order passed by the District Magistrate is illegal and without jurisdiction.

11. However, it will not be out of place to make certain further observations in this matter. Learned counsel appearing for the first respondent, Animal Welfare Officer very seriously contended that something has to be done to prevent the cruelty and torture being inflicted to dumb creatures in the name of cattle races. The report of the Animal Welfare Officer is explicit in respect of the cruelty being inflicted to animals. It is clear from his report that under the guise of cattle race offences are being committed under Section 11 of the

Act. It is submitted that under the guise of entertainment cattle races are being conducted to satisfy sadistic pleasure of a section of public. When such acts are committed to the annoyance of another section of public, the authorities cannot shut its eyes and allow cruelty being inflicted to animals to be carried on. The acts which are allegedly committed in the course of cattle races as disclosed from the report of the Animal Welfare Officer are shocking. There can be no doubt that such cruelty, if proved or if involved, would amount to offences under Section 11 of the Act.

13. A detailed argument was advanced on the question as to what constitutes 'public nuisance'. 'Public nuisance' as defined under Section 268 IPC reads as follows:

> "A person is guilty of a public nuisance who does any act or is guilty of an illegal omission which causes any common injury, danger or annoyance to the public or to the people in general who dwell or occupy property in the vicinity, or which must necessarily cause injury, obstruction, danger or annoyance to persons who may have occasion to use any public right."

Section 290 IPC reads as follows:

> "290. Punishment for public nuisance in cases not otherwise provided for.- Whoever commits a public nuisance in any case not otherwise punishable by this Code, shall be punished with fine which may extend to two hundred rupees."

14. The term 'nuisance' is incapable of exact and exhaustive

definition. It is laid down in the decision reported in ***Naider Mal v. Ugar Sain*** (AIR 1966 Punjab 509) as follows:

> "Term 'nuisance' is incapable of exact and exhaustive definition. The word "nuisance" is derived from fresh word "nuire" which means "to injure, or harm". Literally anything that causes annoyance or injury, harm or prejudice to an individual or the public or anything wrongfully done or permitted which injures or annoys another in the legitimate enjoyment of his legal rights would constitute nuisance. In short anything done which unwarrantably affects the rights of the others, endangers life or health, give offence to the senses, violates the laws of decency or obstructs the comfortable and reasonable use of property may amount to nuisance. Every inconvenience, discomfort or annoyance is not, however, sufficient to constitute a nuisance. No precise rule can be laid down as to the degree and every case must be decided on its own particular facts. Generally speaking however, to constitute nuisance the injury caused must be real and not fanciful or imaginary. It must not be such as results only in a trifling inconvenience. A well kept vegetable shop near a costly dwelling house or any other business which is apt to attract large number of orderly customers may constitute an undesirable neighbour but it may in all cases be nuisance even if the value of the property in certain respects, is affected."

15. The term 'nuisance' has been discussed in detail in K.J.Aiyer's Judicial Dictionary 12th Edition as follows:

> ".....Nuisance is a specie of tort, and may be public or private. As public nuisance it is also a crime. At common law, public nuisances include such diverse activities as carrying on an offensive trade, keeping a disorderly house, selling food unfit for human consumption, obstructing public highways and throwing fireworks about in the street. As private nuisance, it has been described by Wilfield as 'an

> unlawful interference with a person's use or enjoyment of land, or some right over, or connected with it. The essence of a nuisance is a state of affairs that is either continuous or recurrent, a condition or activity which unduly interferes with the use or enjoyment of land. Mere annoyance is not nuisance.
>
> Whether nuisance has been committed can be determined on the political, social, economic situation prevailing in the country as well as the subjective standards of the affected persons.....”

Section 11 of the Prevention of Cruelty to Animals Act also has to be looked into in this context. Whether an act amounts to nuisance or not depends upon the facts and circumstances of each case. The legislature declares certain acts to be offences when it is satisfied that under certain circumstances, such acts constitute nuisance or annoyance to public and the society and such mischief is to be curbed or prevented. In such view of the matter, while considering the scope of the expression 'public nuisance' from what has been discussed, it may appear that certain acts committed during the conduct of cattle races may amount to 'public nuisance' under certain circumstances. If such acts are committed by any particular individual or group of people which amount to public nuisance and if sufficient materials are placed before the District Magistrate to satisfy that there is commission of nuisance in a public place and that the requirements under Section 133 Cr.P.C are satisfied, I am of view that there will be no bar in issuing an order under Section

133 Cr.P.C against the person who is guilty of nuisance so as to prevent or remove such nuisance.

16. If the District Magistrate is satisfied that any act which is being committed in the course of cattle race amounts to "public nuisance", the Magistrate is empowered under Section 133 Cr.P.C to issue orders to prevent such nuisance in public. If the Executive Magistrate gets information as provided in Section 133 Cr.P.C he can invoke the power under Section 133 Cr.P.C., provided, the test for "public nuisance" are satisfied. But, it may not be proper to ban any cattle race by a general order without knowing the details of the nature of the act which might be committed in the course of any particular cattle race. A general order is not contemplated by the provisions of Section 133 Cr.P.C but, the District Magistrate is expected to look into the details of the act allegedly committed and only if it is satisfied that the act allegedly committed amounts to a public nuisance, depending upon the facts and circumstances, the social situation and various other facts that the District Magistrate would get jurisdiction to pass orders under Section 133 Cr.P.C.

17. Any way, the general order passed in this case banning cattle race is illegal and unsustainable. It is therefore be set aside. However, it is made clear that if any information is received regarding any act being caused which constitutes 'nuisance' in any

public place, it will be open to the authority concerned to look into the matter and pass appropriate order in accordance with law, as indicated in this order. If the requirements under Section 133 are made out, a nuisance can certainly be prevented by issuing an order, as stated in the said provision, whether it be during the course of cattle race or not..

This Criminal Miscellaneous Case is allowed.

K.HEMA, JUDGE

vgs.

K.HEMA, J.

Crl.M.C.NO.9953 OF 2002

O R D E R

25.8.2005